

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive
Framework and to Examine the Integration of
Greenhouse Gas Emissions Standards into
Procurement Policies.

Rulemaking 06-04-009

**COMMENTS OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 E) ON FINAL STAFF
RECOMMENDATIONS ON GREENHOUSE GAS
EMISSIONS PERFORMANCE STANDARD PURSUANT
TO SB 1368**

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Dated: October 18, 2006

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I. INTRODUCTION

Pursuant to the October 5, 2006, Assigned Commissioner's Ruling (October 5 ACR), Pacific Gas and Electric Company (PG&E) submits its comments on the final staff recommendations on a greenhouse gas emissions performance standard (EPS) pursuant to SB 1368 in this proceeding.

Consistent with the October 5 ACR, PG&E's comments do not repeat prior comments or legal arguments filed in this proceeding, but reference the specific pleadings and page numbers where prior relevant comments and legal arguments can be found.

As discussed in more detail below, PG&E concludes that the final staff recommendations (1) comply with SB 1368, including providing for a small size exemption, case-by-case exemptions for reliability or cost purposes, and applicability to Qualifying Facilities; (2) need to be clarified to make clear that existing combined cycle generating facilities exempted from the EPS by SB 1368 are not inadvertently subject to the EPS because associated with a new or renewed contract; (3) need to be clarified to more precisely define "repowered" facilities that are

subject to the EPS; (4) need to be clarified to more precisely define the documentation for demonstrating compliance with the EPS “gateway” standard; and (5) need to be revised to provide a fair and transparent “proxy” for GHG emissions under unspecified system power purchase agreements, including imports from the Northwest and Southwest.

In order to aid the Commission and interested parties in reviewing PG&E’s comments, PG&E provides below suggested revisions to the Commission Staff’s final recommended proposal that was contained at pp. 43- 46 of the Final Workshop Report. PG&E recommends that these revisions be included in the Commission’s final decision on the EPS.

II. THE SMALL SIZE EXEMPTION, CASE-BY-CASE RELIABILITY EXEMPTIONS, AND QF PROVISIONS OF THE RECOMMENDED EPS ARE CONSISTENT WITH SB 1368 AND SHOULD BE ADOPTED

The October 5 ACR asks whether the small size exemption recommended in the Final Workshop Report complies with SB 1368. (October 5 ACR, p. 4.) PG&E believes that it does. New Public Utilities Code sections 8341(b)(3), (b)(4), (d)(1) and (d)(6), all authorize the Commission to adopt rules to implement and enforce the EPS required by SB 1368, taking into account various factors in order to balance the GHG reduction goals of the legislation with other goals, such as design and intended use of the powerplant (section 8341(b)(4)); system reliability (section 8341(d)(6)); and overall costs (section 8341(d)(6)). Moreover, SB 1368 states the Legislature’s intent that the EPS be consistent with the goal of reducing “significant” GHG emissions (Section 1(g)) while at the same time reducing exposure to “reliability problems” and fostering the goals of California’s Energy Action Plan II and 2005 Integrated Energy Policy Report (Section 1(h), (j), (l)). In addition, to the extent that long-term utility commitments to new baseload generation of less than 25 MW are still subject to the Commission’s procurement planning authority, including the GHG adder, then there is little risk that the exemption of small

size projects will undermine the goals of SB 1368. For these reasons, PG&E believes the less than 25 MW exemption is lawful and good public policy.

Similarly, the availability of case-by-case exemptions for system reliability or cost reasons is good policy and consistent with SB 1368. New Public Utilities Code section 8341(d)(6) expressly authorizes the Commission to consider the effects of the EPS on system reliability and overall costs, and the Final Workshop Report and many of the interested parties participating in this proceeding support the availability of a case-by-case exemption where it can be demonstrated the EPS has an adverse effect on reliability or overall costs to customers.

Finally, PG&E previously has addressed the authority of the Commission to adopt or implement an environmental standard or regulation without violating the mandatory purchase requirements of the Public Utility Regulatory Policies Act (PURPA). In PG&E's June 30, 2006, opening brief in this proceeding, we concluded as follows on this issue:

The Federal Energy Regulatory Commission has affirmed that under PURPA, the states may regulate environmental issues related to QFs: "While [the PURPA] legislation permits certain facilities to be exempt from State and federal laws, it excludes exemptions from environmental laws. Thus, a qualifying facility may not be built or operated unless it complies with all applicable local, State, and Federal zoning, air, water, and other environmental quality laws, and unless it obtains all required permits."¹ No argument could be made that the PURPA purchase mandate overrides the Commission's authority to reject a QF contract that fails to meet California, Commission or CAISO safety, reliability, environmental or resource adequacy criteria. Likewise, the Commission does not violate the PURPA purchase mandate if it applies an EPS equally on QFs and non-QFs alike as part of that same authority.

(PG&E Opening Brief on Phase 1 Legal Issues, June 30, 2006, p. 6.)

Here, SB 1368 expressly has authorized the Commission to promulgate a GHG emissions standard in order to achieve certain environmental goals. The Commission's promulgation of

¹ *Small Power Production Facilities – Environmental Findings*, 10 FERC 61,314 at 61, 632 (1980).

that standard is clearly permitted by PURPA.

III. THE FINAL STAFF RECOMMENDATIONS SHOULD BE CLARIFIED TO ENSURE EXISTING COMBINED CYCLE GAS FACILITIES EXEMPTED BY SB 1368 REMAIN EXEMPTED FOR THEIR OPERATING LIFE, EVEN IF SUBJECT TO NEW OR RENEWED CONTRACTS

The Final Workshop Report contains an interpretation of SB 1368 that PG&E believes inadvertently or unintentionally would conflict with SB 1368's exemption of existing combined cycle natural gas powerplants (CCGTs). At pages 34 and 44 of the Final Workshop Report, it appears that Commission staff is recommending that, as power procurement contracts are renewed, existing CCGTs would be subject to the EPS at the renewal stage, even though exempted from the EPS pursuant to new Public Utilities Code section 8341(d)(1). See, for example, section 5.a.iv at page 44 of the Final Workshop Report, stating that "...all facilities that meet the requirements of Section 8341(d)(1) should be deemed in compliance at the onset of the EPS program. As contract renewals, and/or repowering of those facilities occur, they should be subject to the gateway standard."

Contrary to the Final Workshop Report, the exemption of existing CCGTs is absolute and not time-limited or contract-limited. Section 8341(d)(1) provides that "All combined-cycle natural gas powerplants that are in operation, or that have an Energy Commission final permit decision to operate as of June 30, 2007, shall be deemed to be in compliance with the greenhouse gases emission performance standard." Thus, if and when an existing CCGT comes up for a renewed contract with an LSE, or enters into a new contract with a new LSE, that contract is exempt from the EPS without regard to when the contract is renewed or entered into. PG&E provides the following suggested revisions to the Final Workshop Report which it recommends in order to clarify this issue:

At page 44 of the Final Workshop Report, revise as follows:

5) Covered Power Sources

- a) Applied to all LSE commitments (Section 8341), including:
 - iv) *All combined cycle gas turbine* facilities that meet the requirements of Section 8341(d)(1) should be deemed in compliance at the onset of the EPS program *and for the remainder of their economic life, without regard to contract renewals but subject to further review if repowered.*

IV. “REPOWERED” FACILITIES SUBJECT TO THE EPS SHOULD BE DEFINED AS ANY FACILITIES WITH AN INCREASE OF 25 MW OR MORE IN RATED CAPACITY

The Final Workshop Report rightfully recognizes that the applicability of the EPS to “repowering” of existing facilities needs to be defined and clarified, in order to ensure that the EPS applies to all new “long term financial commitments” as intended by SB 1368. However, the Report fails to specify what constitutes “repowering,” particularly where the facility being repowered does not result in a new or extended contract or a new ownership investment. Moreover, the Report does not clarify whether or how an existing CCGT which is expressly exempted by SB 1368 is subject to the EPS in the event of any repowering.

PG&E believes that a “bright line” definition of repowering can be applied for purposes of avoiding confusion under SB 1368. PG&E recommends that this “bright line” standard be consistent with the 25 MW “small size” exemption recommended by the Final Workshop Report. In other words, for purposes of defining when a “repowering” requires a facility or contract to demonstrate compliance with the EPS, the Commission would apply the EPS to repowering projects which increase the rated capacity of the powerplant by 25 MW or more. If the project does not increase the capacity by 25 MW or more, it would not be required to go through the “gateway” EPS review again.

PG&E believes this approach has the advantage of administrative simplicity and transparency, and is consistent with the overall goals of SB 1368. PG&E provides the following recommended changes to the Final Workshop Report to implement this definition:

At page 44 of the Final Workshop Report, revise as follows:

5) Covered Power Sources

- b) Applied to all LSE commitments (Section 8341), including:
 - i) utility owned new generation,
 - ii) repowered facilities, *defined as facilities which result in an increase in rated capacity of at least 25 MW*

V. LSES SHOULD BE AUTHORIZED TO USE THE SAME OR SIMILAR DOCUMENTATION TO DEMONSTRATE COMPLIANCE WITH THE “GATEWAY” EPS

The Final Workshop Report adopts a “gateway” EPS, which would require LSEs to demonstrate compliance up-front in the procurement process, at one time. PG&E and all active parties in the proceeding support the “gateway” standard. However, the Final Workshop Report does not provide much detail on precisely what documentation should be used by LSEs at the “gateway” to demonstrate compliance. For example, section 4.b. of the final staff proposal at page 44 of the Final Workshop Report adopts the “gateway” standard but defines compliance as the “reasonably projected emission rate” from the supply source over the term of the commitment.

PG&E recommends the Commission provide some additional guidance regarding what type of documentation should be used by LSEs to demonstrate the “reasonably projected emission rate” under the gateway standard. PG&E believes that the guidance should state that the LSE can and should use the projected emissions at full load design (ISO) conditions. LSEs should supply this information at the time of application to the CPUC for approval of the commitment or contract. For example, if the LSE is an investor-owned utility (IOU) seeking approval of a new supply source under its Commission approved procurement plan, the LSE can and should demonstrate compliance with the “gateway” EPS at the same time it demonstrates compliance of the supply source with its approved procurement plan. Similarly, if the LSE is not

an IOU but is an electric service provider or community choice aggregator subject to the Commission's resource adequacy (RA) regulations, the LSE should demonstrate compliance with the EPS at the same time it demonstrates the characteristics and intended operation of its supply source under the RA filing requirements.

PG&E provides recommended revisions to the Final Workshop Report as follows to accomplish this further guidance on the "gateway" showing:

At page 44 of the Final Workshop Report, revise as follows:

4) Program Screens

- c) The EPS standard will be applied on a "gateway" basis, at the time a LSE's commitment (build or buy) is proposed. (Section 8341(a))
- d) The standard will be applied to the reasonably projected emission rate (lbs of CO₂ per MWh) from the supply source over the term of the commitment. (Section 8341 broadly).
"Reasonably projected emission rate" will be demonstrated by documentation filed with CPUC that uses the projected emissions at full load design (ISO) conditions and is filed at the same time the LSE files to obtain any necessary CPUC approval for the procurement commitment. Investor-owned utilities will file the documentation with their requests for approval of specific transactions pursuant to their long term procurement plans. Other LSEs will file the documentation with their compliance filings at the CPUC under the CPUC's resource adequacy rules.

VI. THE CEC "NET SYSTEM POWER" METHODOLOGY IS NOT WORKABLE AT THE PRESENT TIME FOR USE IN IMPUTING THE EMISSIONS OF UNSPECIFIED CONTRACTS, AND THEREFORE THE COMMISSION SHOULD SCHEDULE A POST-DECISION WORKSHOP TO IMPLEMENT A WORKABLE ALTERNATIVE METHODOLOGY

Several commenters, including PG&E, have pointed out repetitively in their comments that any methodology adopted by the Commission to "impute" the GHG emissions rate of resources under so-called "system purchases" from unspecified resources, must be precise and fair, in order not to unfairly or inaccurately penalize the resources underlying such purchases. The Final Workshop Report attempts to be fair and precise by applying to unspecified contracts a methodology used by the CEC for other purposes, known as the "Net System Power Average."

(Final Workshop Report, pp. 37- 38, 46.)

However, to the best of PG&E's knowledge, the CEC "Net System Power Average" was not developed for the purpose of the EPS, is used solely for a different purpose (power content labeling), and has not been revised, updated or endorsed by the CEC for use in imputing GHG emissions under SB 1368. Although the "Net System Power Average" is clearly superior to other methodologies that are more vague, nonetheless the CEC methodology has not been scrutinized in depth in this proceeding, nor have the CEC staff who developed the methodology for power content labeling been asked to develop and refine it for EPS purposes.

PG&E appreciates the need to ensure that system purchases are subject to the EPS in a fair and objective way that prevents "gaming" of the EPS. However, it is also important that system purchases that are otherwise clean and provide absolutely essential flexibility for resource planning purposes, such as system imports from the Northwest, *not* be penalized or removed from California's resource mix due to an inaccurate, uncertain, or unfair "imputed" EPS.

Given the deadline for this proceeding, PG&E believes that it would be more effective if the Commission adopted the EPS while deferring finalizing a specific methodology for "imputing" GHG emissions from unspecified contracts. The Commission, or Assigned Commissioner, could schedule a specific implementation workshop over the next couple months, with the specific purpose of consulting with the CEC staff and other interested parties on what precise methodology should be used for imputing GHG emissions under unspecified contracts. If an agreed-upon methodology is produced by the workshop, that methodology may be able to be incorporated into the Commission's final decision. If it is not, then the Commission can consider the issues and issue a follow-up decision in early 2007 to resolve any remaining issues.

PG&E recommends the following change to the Final Workshop Report to implement

this revision:

At pages 45- 46 of the Final Workshop Report, revise as follows:

7) Application of the standard to units and contracts (Section 8341 broadly)

- e) Unspecified resource contracts: apply *a standard to be developed based on methodology recommended after a further workshop among Commission and CEC staff and interested parties.*

VIII. CONCLUSION

For the reasons stated in these comments as well as PG&E's other comments and evidence submitted in this proceeding, PG&E requests that the Commission adopt an EPS consistent with PG&E's recommendations.

Respectfully Submitted,

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Dated: October 18, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON FINAL STAFF RECOMMENDATIONS ON GREENHOUSE GS EMISSIONS PERFORMANCE STANDARD PURSUANT TO SB 1368”** on the parties listed below and the parties listed in the official service list for R.04-04-009 by

- transmitting an e-mail message with the document attached to each party on the official service list providing an email address; or
- by first-class mail, postage prepaid, to each party on the official service list not providing an email address.

Executed on October 18, 2006, at San Francisco, California.

/s/
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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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